

## **BILL ANALYSIS**

S.B. 259  
By: Carona  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties report that incumbent local exchange carriers, sometimes called legacy carriers, are telecommunications providers that had historically been regulated in the Texas market. The parties further note that prior legislation deregulated the telecommunications market and, as a result, competitive local exchange carriers were formed to bring competition to areas that were once monopolized by a legacy carrier. Since then, the parties add, competitive local exchange carriers have had less regulatory oversight than legacy carriers in order to provide an incentive for these competitive carriers to compete at the beginning of deregulation.

The parties contend that over time these conflicting policies have caused unequal treatment and regulatory uncertainty for incumbent carriers that are transitioning into deregulation. To address this issue and related issues, S.B. 259 seeks to clarify the applicability of certain statutory provisions relating to incumbent local exchange carriers and competitive local exchange carriers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 259 amends the Utilities Code, in a provision relating to tariff requirements for telecommunications providers not subject to rate of return regulation, to prohibit the Public Utility Commission of Texas (PUC) from requiring a nondominant carrier to obtain advance approval for a filing with the PUC or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions. The bill prohibits the PUC from requiring an incumbent local exchange company for which all of the company's markets have been deregulated, or an incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated, to obtain advance approval for a filing with the PUC or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers a nonbasic retail service or the service's rates, terms, or conditions, or for a market that has been deregulated, a basic network service or the service's rates, terms, or conditions. The bill requires an incumbent local exchange carrier, unless an interconnection agreement contract specifies otherwise, to continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

S.B. 259 prohibits the PUC from imposing, by a rule or regulatory practice adopted under statutory provisions governing the PUC's jurisdiction, a greater regulatory burden on a nondominant telecommunications utility than is imposed on a holder of a certificate of convenience and necessity serving the same area or a deregulated company that either has 500,000 or more access lines in service at the time it becomes a deregulated company or that serves an area also served by the nondominant telecommunications utility.

S.B. 259 establishes that the following provisions do not apply to retail nonbasic services offered by an electing company or by a transitioning company: provisions regarding the regulation of telecommunications services requiring a public utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; provisions authorizing the PUC to adopt certain standards, classifications, rules, or practices related to a public utility and limiting the standards, classifications, rules, or practices imposed by such public utility; and provisions regarding requirements for a change in an incumbent local exchange company tariffed rule or practice.

S.B. 259 removes language specifying that a deregulated company is a nondominant carrier governed in the same manner as a holder of a certificate of operating authority and removes language specifying that a deregulated company that is a nondominant carrier is subject to certain statutory provisions in the same manner as an incumbent local exchange company that is not deregulated. The bill instead includes language specifying that a deregulated company that holds a certificate of operating authority is a nondominant carrier in statutory provisions relating to the issuance of such a certificate and applies certain of those removed statutory provisions to a deregulated company as provided below.

S.B. 259 grants the PUC, notwithstanding any other provision of the Public Utility Regulatory Act, only the authority provided by the bill over a deregulated company that holds a certificate of operating authority issued under provisions governing deregulated companies. The bill applies the following statutory provisions of the Utilities Code to a deregulated company:

- Subchapter A (Judicial Review), Chapter 15 (Judicial Review, Enforcement, and Penalties)
- Subchapters A (General Provisions), C (Customer's Right to Choice), and D (Protection Against Unauthorized Charges), Chapter 17 (Customer Protection), as applicable to carriers holding a certificate of operating authority
- Sections 52.007 (Tariff Requirements Relating to Providers Not Subject to Rate of Return Regulation), 52.060 (Administrative Fee or Assessment), and 52.156 (Retail Rates, Terms, and Conditions)
- Sections 54.001 (Certificate Required), 54.002 (Exceptions to Certificate Requirement for Service Extension), 54.003 (Exceptions to Certificate Requirement for Certain Services), 54.004 (Relinquishment Plan), 54.005 (Notice of and Hearing on Application), 54.006 (Request for Preliminary Order), 54.008(a) (relating to the revocation or amendment of a certificate by the PUC), 54.101 (definition of "certificate" in provisions relating to certificates of operating authority), 54.102 (Application for Certificate), 54.103 (Grant or Denial of Certificate), 54.105 (penalty for violation of the Public Utility Regulatory Act), 54.151 (definition of "certificate" in provisions relating to service provider certificates of operating authority), 54.156 (Resale of Services), 54.158 (Interference with Resold Services Prohibited), 54.159 (Retention of Access Service and IntraLATA Toll Service), 54.255 (Transfer of Certain Certificates), 54.256 (Application of Contracts), 54.257 (Interference with Another Telecommunications Utility), 54.259 (Discrimination by Property Owner Prohibited), 54.260 (Property Owner's Conditions), and 54.261 (Shared Tenant Services Contract)
- Sections 55.010 (Billing for Service to the State), 55.015 (Lifeline Service), 55.123 (Notice of Use of Device to Telecommunications Utility), 55.133 (Notification of Local Exchange Company), 55.134 (Complaints and Enforcement), 55.136 (Disconnection of Service), and 55.137 (Administrative Penalty)
- Chapter 56 (Telecommunications Assistance and Universal Service Fund), except Subchapters F (Service to Uncertificated Area) and G (Funding for Certain Telecommunications Utilities)
- Chapter 60 (Competitive Safeguards)

- Chapter 62 (Broadcaster Safeguards)
- Subchapter E (Publication of Mobile Service Customer Telephone Numbers), Chapter 64 (Customer Protection)
- Sections 65.001 (Statement of Policy), 65.002 (Definitions), 65.003 (Commission Authority), and 65.004 (Information), and Subchapters C (Deregulated Company) and E (Reduction of Switched Access Rates), Chapter 65 (Deregulation of Certain Incumbent Local Exchange Company Markets)
- Chapter 66 (State-issued Cable and Video Franchise)

The bill authorizes the PUC to hear complaints of retail and wholesale customers against deregulated companies that are in the scope of the PUC's authority as prescribed by the bill and authorizes enforcement of those statutory provisions by the PUC using the remedies provided by statutory provisions governing judicial review, enforcement, and penalties applicable to all utilities. The bill establishes that nothing in its provisions affects the continuing applicability of the following provisions of the Public Utility Regulatory Act:

- Sections 51.003 (Applicability) and 51.010(c) (providing that provisions on the reporting of certain transactions and PUC consideration do not apply to certain companies)
- Section 52.002(d) (prohibiting a department, agency, or political subdivision of the state by rule, order, or other means from directly or indirectly regulating rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice Over Internet Protocol services or other Internet Protocol enabled services)
- Sections 54.204 (Discrimination by Municipality Prohibited), 54.205 (Municipality's Right to Control Access), and 54.206 (Recovery of Municipal Fee)
- Section 65.051 (Markets Deregulated)

The bill removes provisions requiring a deregulated company to make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company, and providing an exception to that requirement. The bill repeals a provision placing limitations on the discontinuance of basic local telecommunications service.

S.B. 259 repeals Section 55.012, Utilities Code.

### **EFFECTIVE DATE**

September 1, 2013.